



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,034	08/21/2003	Arthur Dale Ericsson	ADEPAT009US	8065

7590  
John R. Casperson  
PO Box 2174  
Friendswood, TX 77549

12/14/2007

EXAMINER
----------

SHUMATE, PAUL W

ART UNIT	PAPER NUMBER
----------	--------------

3693

MAIL DATE	DELIVERY MODE
-----------	---------------

12/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/645,034	Applicant(s) ERICSSON ET AL.	
	Examiner Paul Shumate	Art Unit 3694	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 and 49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-41 and 49 is/are rejected.
- 7) ☐ Claim(s) 9 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in reply to the Application filed on 08/21/2003.
2. Claims 1-41 and 49 are currently pending.
3. Claims 42-48 and 50-79 have been cancelled by the applicant.
4. Claims 1-41 and 49 have been examined and rejected by the examiner.

### ***Claim Objections***

5. Claims 9 and 26 objected to because of the following informalities:
  - In claim 9 between "as in claim 1" and "accommodations" it seems as if the applicant forgot to include the word "wherein."
  - Claim 26 is not present in the application and is not listed as cancelled.Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claim 31 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 31, the claim cannot be clearly understood due to the open-ended nature of the term "other" used in a Markush group. A Markush group must be definite and complete as to its membership. The Markush group in claim 31 is indefinite as to scope in the use of the term "other" in the definite group "consisting of credit card information, debit card information, and other". Claim therefore rejected. Examiner suggests that the applicant replace the word "other" to overcome this rejection. Correction is required. See MPEP § 2173.05 (h).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim(s) 1, 2, 6, 10-20, 23-25, 27-33, 41, and 49 rejected under 35 U.S.C. 103(a) as being unpatentable over Andres et al, U.S. Patent Publication No.: 2002/0072999 A1 in view of Fisher et al., U.S. Patent No.: 5,835,896.

**Claim 1:**

Andres teaches:

- identifying an item which needs to be sold by a specified time, (see at least the abstract, figure 4, and paragraph(s) 0001, 0011, 0022, 0024, 0024, 0027, 0029, 0030)
- offering the identified item for sale at an auction which takes place at a predetermined time prior to the specified time, (see at least paragraph(s) 0030, 0031)
- receiving bids for said item from at least one bidder, (see at least paragraph(s) 0032)

Andres does not specifically teach:

- selling said item to a highest bidder.

In paragraph 0033 Andres teaches "the present description does not detail a bid evaluation function wherein competing bids are considered and a winning bid chosen as the accepted bid from among the competing bids, although such a feature could clearly be incorporated into the system without departing from the scope of the invention as set forth in the appended claims." Fisher, however, teaches a method and system for processing electronic auction information. Fisher first discloses in at least column 3 lines 45-48 a "simple highest bidder" auction where a single lot goes to an individual high bidder" and then in at least column 5 lines 1-6 discloses that "the auction manager determines whether the bid is successful, and the electronic mail messenger notifies the customer whether the customer's bid

was determined to be successful by the bid manager.” It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include a traditional “highest bidder” auction into the teachings of Andres because selling an item to the highest bidder will yield the greatest profit and it is also very old and well known in the art to use “highest bidder” auctions.

**Claim 2:**

Andres further teaches:

- wherein the item to be sold comprises a vendor's time-dependent commitment to provide a service. (see at least paragraph(s) 0001, 0002, 0022)

Andres teaches in paragraphs 0022 teaches selling a plane ticket which represents a commitment by the airline company to provide a flight service at a specific time which moves freight or people from a specific origin and to a specific destination.

**Claim 6:**

Andres further teaches:

- wherein the item to be sold comprises a vendor's time-dependent commitment to provide an accommodation. (see at least paragraph(s) 0001, 0002, 0022)

Andres teaches in paragraphs 0022 teaches selling a plane ticket which represents a commitment by the airline company to provide a seat accommodation to the buyer of the ticket, where the seat number and plane's expected flight schedule correspond to the details on the ticket. Andres also teaches in paragraph 0022 that the system can be applied to a plurality of other goods and services including hotel and motel reservations.

**Claim 10:**

Andres further teaches:

- wherein the item comprises a vendor's real or personal property. (see at least paragraph(s) 0001, 0002, 0022)

The airline tickets being auctioned off are owned by the supplier until they are purchased by a buyer. While the buyer is likely buying the ticket for the right it represents, the actual item being purchased is an airline ticket.

**Claim 11:**

Andres further teaches:

- wherein the offering of the item is made by an owner of the right to sell the item. (see at least paragraph(s) 0008, 0009, 0022, 0029)

**Claim 12:**

Andres further teaches:

- the offering of the item is made by an internet auction site as an agent of an owner of the right to sell the item. (see at least paragraph(s) 0003, 0005, 0009, 0026)

Andres teaches in the Background of the Invention that it is well known either to sell, in bulk, surplus time-sensitive items to a hosted third party site where the items are resold by the site, or to use a third party hosted site to auction off surplus items on behalf of the items' owner. Andres further teaches the associated problems and drawbacks with using a third party site to dispose of items on the owner's behalf. In paragraphs 0008 and 0009 Andres teaches that the disclosed invention allows suppliers of time-sensitive rights to control all aspects of inventory disposition by controlled inventory depletion and can all be done through the supplier's existing web site and/or email system. Andres teaches the above limitation because the internet auction site is just a part of the bigger airline company which is the owner and supplier of the rights.

**Claim 13:**

Andres further teaches:

- wherein the offering is made on an internet auction site. (see at least paragraph(s) 0009, 0026)

**Claim 14:**

Andres further teaches:

- wherein the item is identified by searching an electronic database belonging to an owner of the right to sell the item, and determining whether the owner has a capacity to sell the item.  
(see at least paragraph(s) 0011, 0024)

**Claim 15:**

Andres further teaches:

- wherein the searching is conducted by the owner of the database. (see at least paragraph(s) 0008, 0009, 0024)

**Claim 16:**

Andres further teaches:

- wherein the searching is conducted by an internet auction site. (see at least paragraph(s) 0008, 0009, 0024)

As explained in the rejection for claim 12, as shown above, Andres teaches that the internet auction site is part of company that owns and supplies the time-sensitive rights, so searching conducted by the internet auction site and search conducted by the owner of the rights is substantially the same thing.

**Claim 17:**

Andres further teaches:

- wherein the searching is conducted prior to a predetermined auction beginning time. (see at least paragraph(s) 0030)

Andres teaches automatically identifying Sell Off and Auction (SOA) ready items on a regular basis (e.g. daily or weekly) which may use an expiration date and/or a pre-expiration last sale date, stored in item inventory records, to determine when SOA treatment should begin on a specific item.

**Claim 18:**

Andres further teaches:

- further comprising sending notices of the auction to predetermined recipients at a predetermined time prior to the predetermined auction beginning time. (see at least paragraph(s) 0025, 0026, 0031)

**Claim 19:**

Andres further teaches:

- wherein the notices are transmitted over the internet. (see at least paragraph(s) 0031)

**Claim 20:**

Andres further teaches:

- wherein the notices are transmitted to at least one recipient selected from the group consisting of auction site members, auction site users, travel agents, ticket agents, web home pages, and internet service provider home pages. (see at least paragraph(s) 0025, 0026)

**Claim 23:**

Andres further teaches:

- wherein the notice displays a hot button to electronically link with an address selected from the group consisting of the auction site home page and the auction site for the item. (see at least figure 8)

**Claim 24:**

Andres further teaches:

- wherein the notices are transmitted prior to the auction beginning time. (see at least paragraphs(s) 0030)

**Claim 25:**

Andres further teaches:

- further comprising setting a reserve price on the item. (see at least paragraphs(s) 0025)



**Claim 27:**

Andres further teaches:

- wherein the auction site is a page at an internet auction site. (see at least figure 1 and paragraphs(s) 0003, 0005, 0026)

**Claim 28:**

Andres further teaches:

- wherein the page displays item identification information, current bid price, and time remaining until end of auction. (see at least paragraphs(s) 0005, 0025, 0030)

**Claim 29:**

Andres further teaches:

- wherein the page displays hot buttons for making a bid and for accessing additional information. (see at least figures 8 and 9)

**Claim 30:**

Andres further teaches:

- further comprising transmitting a bid amount on the item from a bidder to the auction site, transmitting bidder identity and contact information to the auction site, and transmitting payment information to the auction site. (see at least paragraphs(s) 0033)

**Claim 31:**

Andres teaches transmitting payment information to the auction site in paragraph 0033, but does not specifically teach:

- wherein the payment information is selected from the group consisting of credit card information, debit card information, and other.

Fisher, however, teaches in column 7 lines 57-59 "verifying credit card information entered by the customer." It would have been obvious at the time the invention was made to a person having ordinary skill in the art to allow Andres' teachings to incorporate credit card and debit card information into payment information because the use of credit and debit cards in online transactions is old and well

known in the art and credit and debit cards allow buyers to quickly and conveniently make payments online.

**Claim 32:**

Fisher further teaches:

- further comprising determining the winning bidder at the auction end time. (see at least column 3 lines 45-48, column 5 lines 1-6, column 6 lines 10-12, and column 7 lines 1-7)

**Claim 33:**

Fisher further teaches:

- further comprising transmitting, after the auction end time, a successful bid notification to a winning bidder and a statement of charges. (see at least column 3 lines 45-48, column 5 lines 1-6, column 6 lines 10-12, column 6 lines 50-51 and column 7 lines 1-7)

**Claim 41:**

Andres teaches:

- identifying surplus capacity, according to predetermined criteria, for providing accommodation or services at a specific future time or time period, (see at least paragraph(s) 0001, 0011, 0022, 0024, 0024, 0027, 0029, 0030)
- offering a contract to provide all or a portion of such surplus capacity at an auction, (see at least paragraph(s) 0002, 0003, 0006, 0030, 0031)
- receiving bids for said contract from at least one bidder, (see at least paragraph(s) 0006, 0032)
- selling said contract to a highest bidder, thereby reducing the surplus capacity. (see at least paragraph(s) 0004, 0006, 0033)

**Claim 49:**

Andres teaches:

- identifying surplus capacity, according to predetermined criteria, for a future event for which tickets are sold, said future event being capacity limited, (see at least paragraph(s) 0001, 0011, 0022, 0024, 0024, 0027, 0029, 0030)
- offering at least one surplus ticket representative of a contract to provide personal accommodation at the future event from said surplus capacity at an auction, (see at least paragraph(s) 0002, 0003, 0006, 0030, 0031)
- receiving bids for said at least one surplus ticket from at least one bidder, (see at least paragraph(s) 0006, 0032)
- selling said surplus ticket to a highest bidder, thereby reducing the surplus capacity. (see at least paragraph(s) 0004, 0005, 0033)

10. Claim(s) 3-5, 7-9, 21, 22, and 34-40 rejected under 35 U.S.C. 103(a) as being unpatentable over Andres et al in view of Fisher et al further in view of Official Notice.

**Claims 3-5, 7-9, and 35:**

Andres teaches "a system for identifying time-sensitive inventory to be offered for selective sale, offering the inventory for selective sale, administering selective sales over electronic media (see at least paragraph 0001)" and further teaches that the invention "can be applied for a plurality of other goods and services including but not limited to non-airline carrier services, freight transportation services, hotel and motel reservation services, and the like (see at least paragraph 0022)."

However, neither Andres nor Fisher specifically teach:

- wherein the service comprises a freight service selected from the group consisting of scheduled trucking services, shipping services, air freight services, and rail freight services having excess capacity.
- wherein the service comprises a personal service selected from the group consisting of an opening at a specific time for a limousine rental, a boat charter or tour, a moving company

slot of availability, a photographer appointment, a beauty salon appointment, a tanning shop appointment, a tutor appointment.

- wherein the service comprises rental for a specific time period of personal property selected from the group consisting of equipment and automobiles.
- wherein the accommodation comprises a stay for a specific time period at a facility selected from the group consisting of a hotel or motel room, a bed and breakfast, a beach or ski condominium or weekly rental unit, a resort time share unit, and a meeting or banquet facility.
- wherein the accommodation comprises accommodation at a ticketed scheduled event selected from the group consisting of an airline flight, a bus departure, a train departure, a cruise, a sporting event, a concert, a play, and a movie.
- *wherein* accommodation comprises a specific time for an admission to an amusement park or a tee time for a round of golf.
- wherein the ticketed event is selected from the group consisting of an airline flight, a cruise, a sporting event, a concert, and a play.

The examiner takes Official Notice on these limitations. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to allow Andres' teachings to implement these details because they are all old and well known variations of time-sensitive reservations of rights, just like plane tickets, and it would take very few, if any, modifications to Andres' teachings to incorporate the variety of time-sensitive commitments as shown above.

The examiner also notes that the variations of items being claimed are nonfunctional descriptive material and are not functionally involved in the steps recited. The auction steps would be performed regardless of whether the item is a plain ticket, a car rental, or a beauty saloon appointment. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *in re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 44(Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031(Fed. Cir. 1994).

**Claim 21:**

Andres teaches in paragraph 0026 communicating to customers available ticket offers via posting on a web page or via distributing emails which include the offer(s). Andres also teaches in paragraph 0028 that it may be advantageous to "advertise" offers to potential customers. Neither Andres nor Fisher specifically teach:

- wherein the notices are in the form of a communication selected from the group consisting of an Email, a pop-up ad, a banner and a block advertisement.

The examiner takes Official Notice on this limitation. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to allow Andres' teachings to incorporate pop-up ads, banners, and block advertisements in a system that already advertises offers via a web page because pop-up ads, banners, and block advertisements are old and well known ways of advertising on web pages and these may help sellers better advertise their items to more potential customers. An increase in potential customers may increase bidding competition causing higher winning bids and therefore greater revenue generated from the sale of auction items.

**Claim 22:**

Andres further teaches:

- wherein the notice lists item information, minimum bid information, auction beginning time and an auction closing time. (see at least paragraphs(s) 0005, 0025, 0030)

**Claim 34:**

Neither Andres nor Fisher teach:

- wherein the statement of charges includes a fee charged by the auction site.

The examiner takes Official Notice on this limitation. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to incorporate having the auction service site charge buyers a fee that is incorporated into a statement of charge sent after the close of an auction because it is old and well known for a service provider to charge a usage fee on a pay-per-use basis because that is how the site generates revenue.

**Claim 36:**

Andres further teaches:

- further comprising beginning the auction at a predetermined auction beginning time prior to the ticketed event. (see at least paragraph 0030)

**Claim 37:**

Andres further teaches:

- further comprising sending notices of the auction to predetermined recipients at a predetermined time prior to the predetermined auction beginning time. (see at least paragraph(s) 0025, 0026, 0031)

**Claim 38:**

Andres teaches:

- wherein the event is an airline flight, and the notices list identification of departure city and time of departure, and identification of destination city. (see at least figures 8 and 9 and paragraph(s) 0003, 0025)

**Claim 39:**

Andres teaches:

- wherein the notices further list carrier identification, class of seat information, and an arrival time in the destination city. (see at least figures 8 and 9 and paragraph(s) 0003, 0025)

**Claim 40:**

Andres, in at least paragraphs 0031 and 0032, further teaches

- wherein the notice lists a reserve price which is set based a predetermined relationship with at least one factor selected from the group consisting of:
  - a) Availability of seats b) Location of seat or space c) Time of day the travel/event takes place d) Time of year the travel/event takes place e) Weather conditions in either the departure/arrival city f) If a major event is taking place in either departure/arrival city (e.g. Olympics) g) Vendor daily profit goal or intended profit margin h) Actual retail price of

Application/Control Number:  
10/645,034  
Art Unit: 3694

Page 14

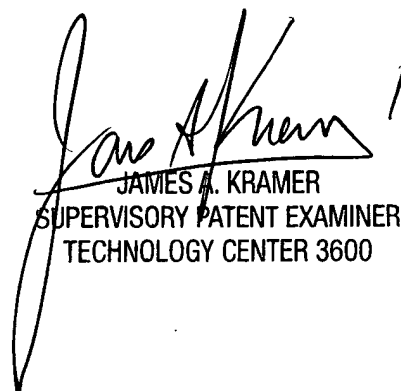
travel/event if purchased at that time i) Average selling price of tickets on the flight or at the event j) pricing information obtained from the Airline Tariff Publishing Company k) Cost per seat mile multiplied by the number of miles on flight.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Shumate whose telephone number is 571-270-1830. The examiner can normally be reached on M-F 8:30 AM - 6:00 PM, EST alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Name: Paul W. Shumate  
Title: Patent Examiner  
Date: 12/10/07  
Signature:



JAMES A. KRAMER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

12.10.07